

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 77-1050

To be argued by  
SHEILA GINSBERG

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----x  
:  
UNITED STATES OF AMERICA, :  
:  
Plaintiff-Appellee, :  
:  
-against- :  
:  
ALFRED JEAN-PIERRE, :  
:  
Defendant-Appellant. :  
:  
-----x

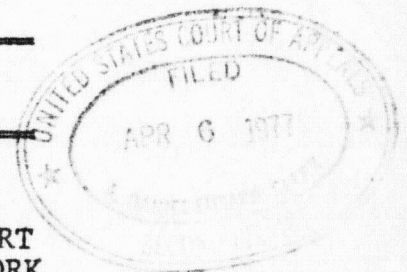
*Bgs*  
Docket No. 77-1050

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APPENDIX TO APPELLANT'S BRIEF

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ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
ALFRED JEAN-PIERRE  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Courthouse  
Foley Square  
New York, New York 10007  
(212) 732-2971

SHEILA GINSBERG,  
Of Counsel.

PAGINATION AS IN ORIGINAL COPY



## CRIMINAL DOCKET - U.S. District Court

SE PO JUDGE/MAGISTRATE Assigned U.S.  
SE MO 0720  
OR Mis 207 1 Disp./Sentence  
NY Fel X District Office

**X76CR 575****ALFRED JEAN-PIERRE**  
(LAST FIRST MIDDLE)

Case Filed  
Mo. Day  
8 31  
No. of Dets  
\* 2  
JUVENILE

**PLATT, J.**

76 575 /  
Yr. Docket No. Def.

## U.S. TITLE/SECTION

## OFFENSES CHARGED

## ORIGINAL COUNTS

21:952(a), 960(a)(1), did import and possess with 2  
841(a)(1) & T-18- 2 intent to distribbte approximately  
582 grams of cocaine hydrochloride.

U.S. MAG. CASE NO. **76 M 1738**

## BAIL • RELEASE

☐ AMT ☐ Fugitive  
Denied ☐ Set ☐ Pers. Recog.  
☐ PSA  
\$50,000 conditions  
☐ Date ☐ 10% Deposit  
☒ Surety Bond  
☐ Bail Not Made ☐ Collateral  
☐ Status Changed (See Docket) ☐ 3rd Ptry Cust ☐ Other

## II. KEY DATES &amp; INTERVALS

| ARREST or  | INDICTMENT  | ARRAIGNMENT                        | TRIAL  | SENTENCE   |
|--|---|------------------------------------|--|--|
| U.S. Custody Begun<br>8/24/76<br>Summons Served<br>First Appearance<br>8-24-76 | High Risk Date<br>Information <input type="checkbox"/><br>8/31/76<br>Indict. Waived <input type="checkbox"/><br>In Charging District<br>Superseding Indict/Info <input type="checkbox"/><br>10/7/76 | 10/10/76<br>1st Plea<br>Final Plea | Trial Set For<br>10/12/76<br>Voor Dire <input type="checkbox"/><br>Trial Began<br>11/1/76<br>Trial Ended<br>11/4/76<br>NOL<br>G. Plea W/Drawn<br>NOL | Disposition of Charges<br>11/4/77<br>Convicted <input type="checkbox"/> On All Charges<br>Acquitted <input type="checkbox"/> On Lesser Offense(s)<br>Dismissed <input type="checkbox"/> WOP: <input type="checkbox"/> WP<br>On Governm'ts Motion |

arrested - 10:00 PM.

| SEARCH WARRANT  | DATE    | INITIAL/NO. | INITIAL APPEARANCE DATE   | INITIAL/NO. | OUTCOME  |
|---|---------|-------------|---|-------------|--|
| Issued<br>Return<br>Summons<br>Served<br>Arrest Warrant Issued<br>COMPLAINT<br>OFFENSE (in Complaint) | 8-25-76 | VAC/07AA    | PRELIMINARY EXAMINATION OR REMOVAL HEARING<br>Date Scheduled 8-27-76<br>Date Held<br>WAIVED <input type="checkbox"/> NOT WAIVED <input type="checkbox"/><br>INTERVENING INDICTMENT <input type="checkbox"/> |             | <input checked="" type="checkbox"/> DISMISSED<br>HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT<br>HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW |

importation of 582 grams of cocaine. T-21 USC Section 952(a)

U.S. Attorney of Asst.

**Bawson**  
Barry Schulman, AUSA

ATTORNEYS

David Rudolf, Esq.

Defense ☐ CJA ☐ Ret ☐ Waived ☐ Self ☐ None ☒ Other ☒ CD

\* Show last names and suffix numbers of other defendants on same indictment/information

**RITA HERRON 2**

DATE (DOCUMENT NO.) PROCEEDINGS

EXCLUDABLE DELAY

8/31/76 Deft. indicted.

8/31/76 Before CATOGGIO, J. - Indictment filed.

9-8-76 Before CATOGGIO, J - case called - deft & counsel David Rudolf present - deft waived formal reading of the indictment - case set down for 9-17-76 before Judge Platt for entering formal/plea not guilty and for all motions for Discovery or other pre trial material - request for bail reduction - denied - bail contd at \$50,000 surety - not guilty plea cannot be accepted by the Magistrate - due to defense counsel's concern of conflict with 10 day rule of Speedy Trial Act (filing of indictment 8-31-76; 9/10/76 would be the last day for entering the plea) request made to appear before Judge Rayfiel who is setting for Judge Platt (at Judicial Conference) to formally depts plea of not guilty - question left open - discussions had on speedy trial rule and Federal Rules - per Magistrate Catoggio further appearance before 9-17-76 would not be necessary, as fules are not violated - schedule of proceedings previously given should be followed - exception to court's ruling taken by defense counsel.

| IV. PROCEEDINGS (continued) |  | V. EXCLUDABLE DELAY       |                            |                   |                      |
|-----------------------------|--|---------------------------|----------------------------|-------------------|----------------------|
| DATE                        | DOCUMENT NO.   | Internal<br>Motion<br>(a) | Settled<br>End Date<br>(b) | Ex<br>Cost<br>(c) | Total<br>Days<br>(d) |
| 9/17/76                     | Before PLATT, J. - Case called. Trail set down for 9/29/76 at 2:30 p.m.  |                           |                            |                   |                      |
| 9/22/76                     | Notice of motion to suppress returnable 9/29/76 filed.   |                           |                            |                   |                      |
| 9/23/76                     | Order received with motion for issuance of subpoena on defts finacial inability to pay fees of witnesses, and forwarded to chambers.   |                           |                            |                   |                      |
| 9-24-76                     | By Platt, J- Added to above Order --"provided that said funds are not to be actively advanced until the court orders during the trial that the same may be released for such purpose!! (see notation of Judge Platt on bottom of Order)  |                           |                            |                   |                      |
| 9-29-76                     | Before Platt, J - case called - deft & atty present - Govts motion for adjournment of trial granted from 9-29-76 to 10-12-76. Trial set down for Oct. 12, 1976 at 9:30 am.   |                           |                            |                   |                      |
| 10/7/76                     | <u>SUPERSEDING INDICTMENT FILED. (S).</u>  |                           |                            |                   |                      |
| 10-12-76                    | Before PLATT, J.-Case called-Deft and counsel present-Deft waives reading of superseding indictment and enters plea of not guilty to superseding indictment-Bail cont'd and attached to superseding indictment-Trial setdown for 10-26-76 at 9:30 A.M.   |                           |                            |                   |                      |
| 10-26-76                    | Before Platt, J.- Case Called. Deft. Jean-Pierre & Counsel Present. Trial set down for 11-1-76 at 9:30 A.M.  |                           |                            |                   |                      |
| 11-1-76                     | Motion for issuance of Subpoena - filed.   |                           |                            |                   |                      |
| 11-1-76                     | By Platt, J.- Order filed that subpoenas be issued for the witnesses and the U.S. Marshal provide advance funds for the purpose of traveling subsistence to each of said witnesses.  |                           |                            |                   |                      |
| 11-1-76                     | Before Platt, J.- Case Called. Deft. & Counsel present. Hearing held on motion to suppress. Hearing concluded. Motion to suppress denied. Trial ordered and begun. Jurors were selected and sworn. Trial continued to 11-3-76 at 10:00 A.M.  |                           |                            |                   |                      |
| 11-3-76                     | Before Platt, J - case called - trial resumed -defts motion for order of dismissal - denied - defts motion to introduce certain medical records re deft Herron argued - denied - deft rests - defts motion made at conclusion of Govts case is renewed and denied - trial contd to 11-4-76.  |                           |                            |                   |                      |
| 11-4-76                     | Before Platt J - case called - deft & counsel present - Jury retires for deliberation at 10:50 am - Order of sustenance signed - Jury returns with a verdict of guilty on counts 1 and 2 and 3 - defts motion for Judgment of acquittal - denied - trial concluded - Court orders deft held in lieu of \$100,000 bail. Sentence adjd without date. |                           |                            |                   |                      |

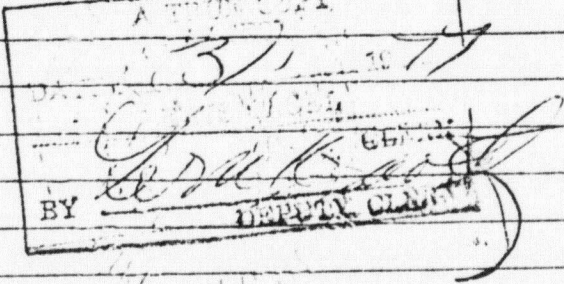
FINE AND RESTITUTION PAYMENTS

| DATE | RECEIPT NUMBER | C.D. NUMBER | DATE | RECEIPT NUMBER | C.D. NUMBER |
|------|----------------|-------------|------|----------------|-------------|
|      |                |             |      |                |             |
|      |                |             |      |                |             |
|      |                |             |      |                |             |

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## CRIMINAL DOCKET

| DATE    | PROCEEDINGS   |
|---------|---|
| 1-14-77 | <p>Before PLATT, J - case called - deft &amp; atty Marion Seltzer</p> <p>Present - deft sentenced on count 1 to imprisonment for 10 yrs under 18:4205(b)(2) plus special parole term of 20 years and to pay a fine of \$5,000; Deft sentenced on count 2 to imprisonment for 10 years under 18:4205 (b)(2) plus special parole term of 20 years, such sentence of imprisonment and special parole to run concurrently with the sentence imposed in count 1; and to pay a fine in the amount of \$5,000; deft sentenced on count 2 to imprisonment for 10 years under 18:4205(b)(2) plus special parole term of 20 yrs; such sentence of imprisonment &amp; special parole to run concurrently with sentence imposed under count 1 and to pay a fine of \$5,000; deft is sentenced on count 3 to imprisonment for 10 yrs under 18:4205(b)(2) plus special parole of 20 years, such sentence of imprisonment and special parole to run concurrently with sentences imposed under counts 1 and 2 and to pay a fine of \$5,000; total fine of \$15,000; clerk to file Notice of appeal for the deft. On motion of AUSA Kramer the indictment is dismissed as to this deft only.</p> |
| 1-14-77 | Judgment and commitment filed - certified copies to Marshal   |
| 1-14-77 | Notice of appeal filed  |
| 1-14-77 | Docket entries and duplicate of notice mailed to the court of appeals.  |
| 1-20-77 | Judgment & commitment retd and filed - deft. del. to Warden, MCC. NY  |
| 2-7-77  | Scheduling order filed recvd from the court of appeals that the record on appeal be docketed on or before 3-2-77  |
| 3/1/77  | Stenographers transcript dtd 9/17/76, and 11/4/76 filed.  |
|         |  <p>A rectangular stamp with a signature across it. The signature appears to be 'C. D. K. ...'. Below the signature, the word 'BY' is printed. To the right of 'BY', there is a line for a name and a date. The date '3/1/77' is handwritten above the signature.</p>   |



TRP:BS:jb  
F# 763163(S)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

76 CR 575 (S)

----- X  
UNITED STATES OF AMERICA

S U P E R S E D I N G  
I N D I C T M E N T

- against

ALFRED JEAN-PIERRE and  
LOUISE FINGERS

Defendants.

Cr.  
(T.21, U.S.C. §§912(a),  
960(a)(1), 841(a)(1),  
841 and Title 18 U.S.C. §2)

----- X  
THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 22nd day of July, 1976 and the 24th day of August, 1976, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant ALFRED JEAN-PIERRE and the defendant LOUISE FINGERS, together with RITA HERRON named herein as a co-conspirator but not as a defendant, and others known and unknown to the Grand Jury, did knowingly and intentionally combine, conspire, confederate and agree to violate Sections 341(a)(1), 952(a) and 960(a)(1) of Title 21, United States Code.

1. It was a part of said conspiracy that the defendant and co-conspirators would knowingly and intentionally import into the United States from places outside thereof quantities of cocaine hydrochloride, a Schedule II narcotic drug controlled substance.

2. It was further a part of said conspiracy that the defendants and co-conspirators would knowingly and intentionally distribute and possess with intent to distribute quantities of cocaine hydrochloride, a Schedule II narcotic drug controlled substance.

FILED  
U.S. DISTRICT COURT E.D. N.Y.  
OCT 7 1976  
P.M.

4



3. It was further a part of said conspiracy that the defendants and co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities. (Title 21, United States Code, Sections 846 and 963).

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendant ALFRED JEAN-PIERRE and the defendant LOUISE FINGERS committed the following.

O V E R T   A C T S

1. On or about August 17, 1976, the defendant LOUISE FINGERS made a telephone call to co-conspirator RITA HERRON.

2. On or about August 24, 1976, the defendant ALFRED JEAN-PIERRE travelled from Curacao to New York.

COUNT TWO

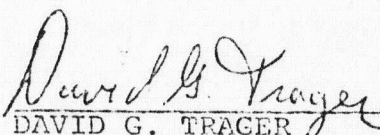
On or about the 24th day of August, 1976, within the Eastern District of New York, the defendant ALFRED JEAN-PIERRE and the defendant LOUISE FINGERS, together with RITA HERRON, not herein named as a defendant, did knowingly and intentionally import approximately Five Hundred Eighty-Two (582) grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance, into the United States from Medellin, Colombia. (Title 21, United States Code, Sections 952(a) and 960(a)(1) and T. 18 U.S.C. §2).




COUNT THREE

On or about the 24th day of August, 1976, within the Eastern District of New York, the defendant ALFRED JEAN-PIERRE and the defendant LOUISE FINGERS, together with RITA HERRON, not herein named as a defendant, did knowingly and intentionally possess with intent to distribute approximately Five Hundred Eighty-Two (582) grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

A TRUE BILL.

  
\_\_\_\_\_  
DAVID G. TRACER  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

  
\_\_\_\_\_  
FOREMAN.

No. \_\_\_\_\_

UNITED STATES DISTRICT COURT

EASTERN District of NEW YORK

Division

THE UNITED STATES OF AMERICA

vs.

ALFRED JEAN-PIERRE, et al.,

INDICTMENT

(T. 21, U.S.C. §§952(a),  
960(a)(1), 841(a)(1),  
846 and T. 18, U.S.C. §2)

A true bill,

Foreman.

Filed in open court this \_\_\_\_\_ day  
of \_\_\_\_\_, A. D. 19\_\_\_\_

Clerk.

Bail, \$\_\_\_\_\_



1 Charge

2 THE COURT: Good morning ladies and  
3 gentlemen. I am going to give you instructions  
4 on the law. It is not my purpose to read the  
5 instructions to you. I realize it makes it harder  
6 for you to follow them. If I were to give them to  
7 you extemporaneously however, this does minimize  
8 the risk of error by reading them to you other than  
9 giving them from the top of my head. So, I ask you  
10 to bear with me and if my voice starts to fall or  
11 you start to miss any of it please let me know by  
12 raising your hand or making some sort of noise. I  
13 don't want you to miss any portion of the instructions  
14 so you may follow them.

15 My charge is roughly divided into three or  
16 four parts. In the beginning I will give you some  
17 general instructions and then I am going to discuss  
18 the indictment with you. I am going to discuss the  
19 indictment in something of an inverse order. I am  
20 going to discuss what we call the substantive counts  
21 first, counts 2 and 3 and then the conspiracy count  
22 last. Number 1 last because conspiracy instructions  
23 are quite a bit longer than the substantive counts  
24 because it is easier for you to follow that way.  
25 After that I will give you some additional general

## 2 Charge

1  
2 instructions on the evidence and finally I will give  
3 you some instructions on how you should conduct  
4 yourselves as jurors when it comes time for your  
5 deliberations. Just bear that general outline in  
6 mind and I feel it will make it a little easier for  
7 you to follow the instructions.

8 Now that you have heard the evidence and the  
9 argument in this case it becomes my duty to give  
10 you instructions of the Court as to the law applicable  
11 to this case.

12 It is your duty as jurors to follow the law as  
13 stated in the instructions of the Court and to apply  
14 the rules of law so given to the facts as you find  
15 them from the evidence in the case.

16 You are not to single out one instruction  
17 alone as stating the law but must consider the  
18 instructions as a whole.

19 Neither are you to be concerned with the wisdom  
20 of any rule of law stated by the Court. Regardless of  
21 any opinion you may have as what the law ought to be  
22 it would be a violation of your sworn duty to base a  
23 verdict upon any other view of the law than that given  
24 in the instruction of the Court. Just as it would be  
25 a violation of your sworn duty as judges of the facts



3

## Charge

to base a verdict upon anything but the evidence in the case.

You must not permit yourselves to be governed by sympathy, bias, prejudice or any other consideration not founded on evidence and these instructions on the law.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the evidence presented to all the jurors and to arrive at a verdict by applying the same rules of law as given in the instructions of the Court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the not guilty plea of the accused. You are to perform this duty without bias or prejudice as to any party. Again, the law does not permit jurors to be governed by sympathy, prejudice or public opinion. Both the accused and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court and reach a just verdict regardless of the consequences.

## Charge

I am going to send the exhibits which have been received in evidence with you as you retire for your deliberations.

An indictment is but a form or method of accusing a defendant of a crime. It is not evidence of any kind against the accused.

There are two types of evidence from which a jury may properly find a defendant guilty of a crime. One is direct evidence -- such as testimony of an eyewitness. The other is circumstantial evidence -- the proof of facts and circumstances which rationally imply the existence or non-existence of other facts because such other facts usually follow according to the common experience of mankind.

Thus the footprint of a man in the sand implied to Robinson Crusoe that there was another man with him on the desert island and indeed there was, the man Friday. Thus on the one hand you may have direct evidence of the issue and on the other hand you may have circumstantial evidence of the issue.

The law does not hold that one type of evidence is necessarily of better quality than the other. The law requires only that the Government prove its case beyond a reasonable doubt both on the direct and



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## Charge

circumstantial evidence. At times the jury might find that circumstantial evidence is of a better quality. At other times they may feel direct evidence is of better quality. The judgment is left entirely up to you.

As a general rule, the law makes no distinction between direct and circumstantial evidence but simply requires that, before convicting a defendant, the jury be satisfied of the defendant's guilt beyond a reasonable doubt for all the evidence in the case.

The law presumes the defendant to be innocent of crime. Thus a defendant although accused begins the trial with a "clean slate" -- with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant unless the jury are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant for the law never imposes

6

## Charge

upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt does not mean a doubt arbitrarily and capriciously asserted by a juror because of his or her reluctance to perform an unpleasant task. It does not mean a doubt arising from the natural sympathy which we all have for others.

It is not necessary for the Government to prove the guilt of the defendant beyond all possible doubt. Because, if that were the rule, very few people would be convicted. It is practically impossible for a person to be absolutely sure and convinced of any contraverted fact which, by its nature, is not susceptible of mathematical certainty. In consequence the law says that a doubt should be reasonable doubt, not a possible doubt.

A reasonable doubt is a doubt based upon reason and common sense. The kind of doubt that would make a reasonable person to hesitate to act. Proof beyond a reasonable doubt must therefore be proof of such convincing character that you would be willing to react and act upon it unhesitatingly in the most important of your own affairs.

The jury will remember that a defendant is never



Charge

to be convicted on mere suspicion or conjecture.

Again, a reasonable doubt means a doubt sufficient to cause a prudent person to hesitate to act in the most important affairs of his or her life.

The requirement of proof beyond a reasonable doubt operates on the whole case and not on the separate bits of evidence. Each individual item of evidence need not be proven beyond a reasonable doubt.

Now, I am going to discuss with you the substantive counts. Mainly counts 2 and 3 first and then the conspiracy count last. In other words, I am going to reverse the order in the indictment and take count 2 first and then count 3 and count 1 last.

Count 2 reads as follows: "On or about the 24th day of August, 1976, within the Eastern District of New York, the Defendant Alfred Jean-Pierre and the Defendant Louise Fingers, together with Rita Herron, not herein named as a defendant, did knowingly and intentionally import approximately five hundred eighty-two grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance, into the United States from Medellin, Columbia. In violation of Title 21, United States Code, Sections 952A and 960A(1) and T. 18 U.S.C. Subsection 2)."

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## Charge

What is Section 952A? That provides as follows:

"It shall be unlawful to import into the customs territory of the United States from anyplace outside thereof or import into the United States from anyplace from outside thereof any controlled substance in Schedule I or II of the Subchapter of the Schedule Chapter in question which shall include cocaine hydrochloride."

Section 960A -- "Is one and the same and it says that a person who contrary to Section 952 knowingly and intentionally exports a controlled substance shall be in violation of the law." You will recall I also mentioned Section 2 of Title 18. The so-called aiding and abetting section. And that reads as follows:

"That whoever commits an offense against the United States or aids or abets or counsels or commands or induces or procures its commission is punishable as principal. Whoever willfully causes any act or acts to be done if directly performed by him would be an offense against the United States punishable as principal as if he did it himself."

The following are the essential elements of the crime charged which must be proven beyond a reasonable doubt. One: The act or acts of importing cocaine



## Charge

into this country. Two: The knowledge it was contrary to the law to import cocaine into this country, and three: Doing such acts knowingly or intentionally.

Now count number 3 of the indictment reads as follows: "On or about the 24th day of August, 1976, within the Eastern District of New York, the Defendant Alfred Jean-Pierre and the Defendant Louise Fingers, together with Rita Herron, not herein named as a defendant, did knowingly and intentionally possess with intent to distribute approximately five hundred eighty-two grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a) (1) and Title 18, United States Code, Section 2)."

I have just read to you count 3. Now, Section 841(a) (1) provides that it shall be unlawful for any person to knowingly or intentionally have or to possess with intent to distribute a controlled substance. A Schedule II narcotic which deals with cocaine.

Section E of the crime charged must be proven beyond a reasonable doubt on count 3 as follows: One: That the act or acts or possession were with intent to distribute cocaine. Two: That such possession was knowingly and intentionally. Three: That such

Charge

possession was with an intent to distribute. Now I will give you instructions with respect to aiding and abetting. I will reread it. Section II of Title 18. "Whoever commits an offense against, aids, abets, counsels, commands, induces, or procures the commission of is punishable as principal. Whoever willfully causes an act or acts to be done directly by him or another against the United States is punishable as principal."

The guilt of a defendant may be established without proof that the accused person did every act that constituted the offense charged. In other words, every person who willfully participated in the commission of the crime may be found guilty of that offense. Participation is the willful, voluntary and intentional, and without specific intent to do something the law forbids which is specifically to fail to do something which the law requires to be done. That is to say when the purpose is to disobey or disregard the law. Now, I read from here --

In order to aid and abet another to commit a crime it is necessary that the actor willfully associate himself in some way with the criminal venture and willfully participate in it as he would in something



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Charge

he wishes to bring about. That is to say, that he willfully seek by some act or omission of his to make the criminal venture succeed.

An act or omission is willfully done if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something that the law requires to be done. That is to say with bad purpose either to disobey or to disregard the law.

You of course may not find any defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons and that the defendant participated in its commission.

Mere presence at the scene of the crime and knowledge about the crime being committed are not sufficient to establish that the defendant aided and abetted the crime. Unless, you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

An act is done "knowingly" if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

An act is done willfully if done voluntarily

12

Charge

and intentionally and with the specific intent to do something the law forbids. That is to say, with bad purpose either to disobey or to disregard the law.

Now going back to count 1. Count 1 reads as follows: "On or about and between the 22nd day of July, 1976 and the 24th day of August, 1976, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the Defendant Alfred Jean-Pierre and the Defendant Louise Fingers, together with Rita Herron named herein as a co-conspirator but not as a defendant, and otherwise known and unknown to the Grand Jury, did knowingly and intentionally combine, conspire, confederate and agree to violate Sections 841(a) (1), 952(a) and 960(a) (1) of Title 21, United States Code.

1. It was a part of said conspiracy that the defendant and co-conspirators would knowingly and intentionally import into the United States from places outside thereof quantities of cocaine hydrochloride, a Schedule II narcotic drug controlled substance.

2. It was further a part of said conspiracy that the defendants and co-conspirators would knowingly and intentionally distribute and possess with intent to distribute quantities of cocaine hydrochloride, a



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Charge

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Schedule II narcotic drug controlled substance.

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3. It was further a part of said conspiracy that the defendant and co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities. All in violation of Title 21, United States Code, Sections 846 and 963.

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the Defendant Alfred Jean-Pierre and the Defendant Louise Fingers committed the following.

Overt Acts

1. On or about August 17th, 1976, the Defendant Louise Fingers made a telephone call to co-conspirator Rita Herron.

2. On or about August 24th, 1976, the Defendant Alfred Jean-Pierre travelled from Curacao to New York."

Now Section 846 of Title 21 of the United States Code pertains to Section 841(a) (1), that I read to you concerning namely, concerning possession of intent to distribute cocaine and 846 says, "That any person who attempts or conspires to commit any offense upon the Subchapter shall be in violation of the law."

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## Charge

Similarly, Section 963 of Title 21 pertains to Section 952 and 960(a) (1). I would like to read it to you. "It forbids the intentional importation of cocaine into this country and Section 963 provides any person who attempts to or conspires to do any such offense is found in this Subchapter in violation of the law."

The following essential elements must be proven beyond a reasonable doubt to establish the offense of conspiracy charged in the indictment: One. That there was an agreement or conspiracy between two or more persons to violate the law as charged in the indictment.

Two. That the conspiracy described in the indictment was formed willfully and existed at or about the time alleged.

Three. That the conspiracy was so willfully formed that it existed for the purpose of knowingly and intentionally importing into the United States from places outside the United States quantities of cocaine that were contrary to law for the purpose of knowingly and intentionally distributing and possessing with intent to distribute quantities of cocaine contrary to law.

Four. The defendant willfully became a member.



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Five. One of the conspirators thereafter knowingly committed one of the overt acts charged in the indictment at or about the time and place alleged.

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Six. That such overt act was done knowingly in furtherance of the object of the conspiracy as charged.

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Seven. That the defendant was knowingly and willfully a member of the conspiracy with the intent in the furtherance of one of its objectives.

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If the jury should find beyond a reasonable doubt that the evidence from the case proved the existence of the conspiracy count as charged in the indictment. Proof that during the existence of the conspiracy one overt act or acts were done by one or more than one of the conspirators in the furtherance of some object or purpose of the conspiracy then the proof of conspiracy as charged is complete and it is complete as to every person found by the jury to be willfully a member of the conspiracy at the time the overt act was committed.

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What is a conspiracy? A conspiracy is a determination of two or more persons to perform certain acts and to accomplish an unlawful purpose. Conspiracy

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is a kind of participation in criminal purposes in which member becomes the agent of every other member.

The gist of the offense is a combination of or an agreement to disobey or to disregard the law. The mere similarity of conduct among various persons and the fact they may have associated with each other -- that they discussed common names of interest does not necessarily establish proof of the existence of the conspiracy. Wherein association may not in and of itself be any basis for an inference of guilt of conspiracy. However, the evidence in the case need not show the members entered into any expressed or formal agreement or they directly by word spoken or in writing stated between themselves what their object or purpose was to be or the details thereof or the means by which the object of the purpose was to be accomplished. What the evidence in this case must show beyond a reasonable doubt to establish the proof the conspiracy existed is that the members in some way or the other or through some contrivance positively or possibly came to a mutual understanding to try to accomplish a common and unlawful plan. The evidence in this case need not establish all the means or methods set forth in the indictment that were agreed



upon to carry out the alleged conspiracy or that all the means and methods were agreed upon or actually used to put in operation. Not that all of the persons charged to be members of the conspiracy or such. What the evidence in this case must establish beyond a reasonable doubt is that the alleged conspiracy was knowingly formed and that one of the means and methods described upon in the indictment were agreed upon to be used to effect or accomplish the conspiracy that was charged in the indictment and that two or more persons including the defendant were knowingly members of the conspiracy as charged in the indictment.

In your consideration of the evidence in this case, that the offense and conspiracy charged, you should first determine whether or not the conspiracy existed as alleged in the indictment. If you conclude that the conspiracy did exist you should next determine whether or not the defendant willfully became a member of the conspiracy. If it appears beyond a reasonable doubt from the evidence in the case that the conspiracy alleged in the indictment was willfully formed, the defendant willfully became a member of the conspiracy either at its inception or afterwards that therefore one or more conspirator committed an overt act in

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furtherance of some object or purpose of the conspiracy then there may be a conviction even though the conspirators may have not succeeded in accomplishing their common object or purpose or in fact they may have failed in so doing.

The extent and dependence that the defendant participated is not determinative of his guilt or innocence. The defendant may be convicted as a conspirator although he may have played a minor part in the conspiracy. An overt act is any act normally committed by one of the conspirators to effect or accomplish some purpose of the conspiracy. The overt act may not be criminal in nature. It can be considered separate and apart from the conspiracy. It may be as innocent as the act of a man walking across the street or driving an automobile or using a telephone. It must however be an act which follows and intends to accomplish the plan or scheme known of in such object or purpose of the conspiracy charges in the indictment. It is not necessary that all of the overt acts charged in the indictment be performed. One of the overt acts is sufficient. One may become a member of a conspiracy without full knowledge of all of the details of the conspiracy. On the other hand,



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the person who has no knowledge of the conspiracy but who happens to act in a way in the furtherance of some object of the conspiracy does thereby become a conspirator. Before the jury may find the defendant or any person guilty of conspiracy the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly performed and that the defendant or other person whose claim to have become a member willfully participated in a unlawful act with the intent to advance some purpose or further some object of the conspiracy.

The act of participation means to willfully participate voluntarily or intentionally to do something specifically that the law forbids. That the act has a bad purpose to disobey or disregard the law. So that any defendant or any person who knowingly encourages and advises or assists in the purpose of the further undertaking of the scheme thereby, he becomes a willful participant and even a conspirator. One who joins the existence is charged with the same responsibility as if he or she had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed the jury should consider the acts of all the alleged

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participants. However, in determining whether the defendant was a member of the conspiracy if any, the jury should consider all the acts and statements. He cannot be bound by the acts or demonstrations of other participants until it's established that the conspiracy existed in that he was one of its members. Whenever it appears beyond a reasonable doubt that the evidence in this case, that any conspiracy existed and that the defendant was one of the members then the statements that were knowingly made and the acts knowingly done by any person likely found to be a member may be considered by the jury in this case. Otherwise, the defendant was found to be a member even though the statements made have occurred in his absence and without the knowledge of the defendant providing that such statements were actually and knowingly made and known during and continued through the conspiracy in the furtherance of some act or purpose of the conspiracy.

Otherwise, any admission or incriminatory statement made or act outside of the Court made by one person may not be considered and received against any other person who was not present and did not hear the statement or see the act done. Therefore, any



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2 statement of any conspirator, not in the furtherance  
3 of the conspiracy may report the existence and may be  
4 considered as evidence only for the person making them.  
5 The indictment charges the conspiracy between Alfred  
6 Jean-Pierre, Louise Fingers and Rita Herron all who are  
7 named as co-conspirators. A person cannot conspire  
8 with himself therefore, you cannot find the defendant  
9 guilty unless you find beyond a reasonable doubt that  
10 he participated in the conspiracy as charged at least  
11 with one other person.

12 Intent ordinarily may not be proved directly.  
13 Because there is no way of fathoming or scrutinizing  
14 the operations of the mind. But you may infer the  
15 defendant's intent from the surrounding circumstances.  
16 You may consider any statement made and done or omitted  
17 by the defendant, and all other facts and circumstances  
18 in evidence which indicate his state of mind. It is  
19 ordinarily reasonable to infer that a person intends  
20 the natural and probable consequences of acts knowingly  
21 done or knowingly omitted.

22 Now the defendant claims that the Government  
23 accomplished witnesses to testify falsely for reasons  
24 of their own. Such as to obtain or insure her own  
25 freedom from imprisonment -- was she reliable or a

## Charge

credible witness or had she had a specific motive against and/or animosity against the defendant. Therefore, says the defendant her testify is unbelievable and without her testimony the Government case must fall. It is for you and for you alone to determine to what extent based on all the evidence such witness is to be believed.

In reply the Government says that the documentary evidence for collaborating Miss Herron's testimony, that proves both trips in question and prior, rather two roundabout trips by the defendant not by the witness Herron to Columbia where the source of the cocaine is alleged to have been and returned not to Miami but to New York and then arrested and brought to the D.E.A. headquarters. Consider the defendant's attempt to conceal and cover up the whole venture by denying he knew Miss Herron prior to the last airplane trip to New York. It is for you to determine whether and to what extent the documentary evidence and if the Government arguments are to be believed and what such evidence and testimony proves. It is for you to determine whether the defendant made these trips to Columbia for business, vacation or other reasons



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2 as Miss Seltzer states or for the purpose of  
3 purchasing cocaine, importing cocaine as the  
4 Government claims.

5 Statements and arguments of counsel are not  
6 evidence in the case. Unless made as an admission  
7 or stipulation of fact. When the attorneys on both  
8 sides stipulate or agree as to the existence of the  
9 fact, you must, unless otherwise instructed, accept  
10 the stipulation as evidence, and regard that fact as  
11 proved.

12 Unless you are otherwise instructed, the  
13 evidence in the case always consist of the sworn  
14 testimony of the witnesses, regardless of who may  
15 have called them and all exhibits received in evidence,  
16 regardless of who may have produced them and all the  
17 facts which may have been admitted or stipulated and  
18 all facts and events which may have been judicially  
19 noted and all applicable presumptions stated in these  
20 instructions.

21 Any evidence as to which an objection was  
22 sustained by the Court, and any evidence ordered  
23 stricken by the Court, must be entirely disregarded.

24 Evidence does include, however, what is brought  
25 out from the witnesses on cross-examination as well as

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what is testified to on direct examination.

Unless you are otherwise instructed anything you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

You are to consider only the evidence in the case and your verdict is to be based on the evidence only but in your consideration of the evidence you are limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in the light of experience.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established by the evidence in the case.

If a lawyer asks a witness a question which contains an assertion of fact you may not consider the assertion as evidence of that fact. The lawyers' statements are not evidence.

Evidence relating to any statement, or act or omission, claim to have been made or done by a defendant outside of Court and after a crime has been



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committed, should always be considered with caution and weighed with great care. And, all such evidence should be disregarded entirely, unless the evidence in the case convinces the jury beyond a reasonable doubt that the statement or act or omission was knowingly made or done.

A statement or act or omission is "knowingly" made or done, if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

In determining whether any statement or act or omission claim to have been made by a defendant outside of Court, and after a crime has been committed was knowingly made or done, the jury should consider the age, sex, training, education, occupation and physical and mental condition of the defendant and his treatment while in custody or under interrogation, as shown by the evidence in the case.

And, also all other circumstances in evidence surrounding the making of the statement or omission including whether, before the statement or act or omission was made or done, the defendant knew or had been told and understood that he was not obliged or required to make or do the statement or act or omission

Charge

claimed to have been made or done by him. That any statement or act or omission which he might make or do could be used against him in Court. That he was entitled to the assistance of counsel before making any statement, either oral or in writing or before doing any act or omission.

And, that if he was without money or means to retain counsel of his own choice, an attorney would be appointed to advise and represent him free of cost or obligation.

In other words, whether he was given his Constitutional rights, Miranda Warnings.

If the evidence in the case does not convince you beyond a reasonable doubt that a statement was made voluntarily and intentionally you should disregard it entirely. On the other hand, if the evidence in the case does show beyond a reasonable doubt that a statement was in fact voluntarily and intentionally made by a defendant, you must consider it as evidence in the case against the defendant who voluntarily and intentionally made the statement.

You as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.



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You should carefull scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness's ability to observe the matters as to which he has testified and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which if at all each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently and innocent misrecollection, like failure of recollection is not an uncommon experience. In weighing the effect of the discrepancy always consider whether it pertains to a matter of

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importance or an unimportant detail and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment you will give the testimony of each witness such credibility, if any, as you may think it deserves.

Now an accomplice is one who unites with another person in the commission of a crime voluntarily and with a common intent. An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of an accomplice alone may be believed by the jury, may be given sufficient weight to sustain a verdict of guilty even though not corroborated or supported by any other evidence. However, the jury should keep in mind such testimony is always to be weighed with precaution and weighed with great care. In the event, you should find no corroborative evidence or accomplice testimony in this case, you should never convict a defendant upon unsupported testimony of an alleged accomplice unless you believe the unsupported testimony beyond a reasonable doubt. The law does not prohibit the use of an accomplice but whether you approve of their use is not to be taken into your considerations



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in this case. There are certain types of crime, the Government of necessity is frequently relying on testimony of accomplice persons with criminal records.

Informants otherwise would be difficult in effecting the prosecution of wrongdoers -- often the Government will have no choice in the matter. It must take the witness to the transaction as they are. It is universal of the Federal Court that the defendant may be convicted on the testimony of an accomplice standing alone if you believe such testimony beyond a reasonable doubt. This would still be so even if the accomplice was a confirmed criminal. There are several other persons whose name you have heard during the course of this trial and one or more of the attorneys have referred to their absence from the trial. Neither the defendant nor the Government may benefit from the absence of such witness or possible witness because each side had an equal opportunity or lack of equal opportunity to have them testify.

If either side wanted any of them here as far as the record shows they had equal opportunity to get them and that should not affect your judgment on passing on this case in determining the guilt or innocence of the defendant. Bear in mind the fact,



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2 the law never imposes upon the defendant in a  
3 criminal case the burden of producing or calling  
4 any witnesses or producing any evidence. The  
5 testimony of a witness may be discredited or  
6 impeached by showing he or she made statements  
7 inconsistent with his or her present testimony.  
8 Early contradictory statements are admissible only  
9 to impeach the credibility of the witness and not  
10 to establish the truth of those statements. It's  
11 the province of the jury to determine the credibility  
12 if any to be given to the testimony of a witness  
13 impeached. A witness should knowingly to testify  
14 falsely to any material matter you have the right to  
15 distrust such witness's testimony or otherwise reject  
16 all the testimony of this witness or give it the  
17 credibility you think it deserves.

18 The law does not compel a defendant in a  
19 criminal case to take the witness stand and testify  
20 and no presumption of guilt may be raised and no  
21 inference of any kind may be drawn from the failure  
22 of the defendant to testify. As stated before, the  
23 law never imposes upon a defendant in a criminal case  
24 the burden or duty of calling any witness or producing  
25 any evidence.



## Charge

It is the duty of the attorneys on each side of the case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because an attorney has made objections.

Upon allowing testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence. As stated before, the jurors are the sole judge of the credibility of all witnesses and the weight and effect of all evidence.

When the Court has sustained an objection to a question addressed to a witness the jury must disregard the question entirely and may draw no inference from the wording of it or speculate as to what the witness would have said if he had been permitted to answer any question.

The fact that the Court has asked one or more questions of the witness for clarification or admissible as evidence is not to be taken by you in any way as indicating that the Court has any opinion as to the guilt or innocence of the defendant in this

Charge

case and you are to draw no such inferences therefrom. That determination is up to you and you alone based on the facts in this case and the applicable law in these instructions.

You are here to determine the guilt or innocence of the accused from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused, you should so find even though you may believe one or more other persons are guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find the accused not guilty.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict in turn must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with the view to reaching an agreement. If you can do so without violence to each individual judgment, each of you must decide the case for himself but do so only after an impartial



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consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense. Consider the evidence in the case for only the purposes for which it has been admitted and give it a reasonable and fair consideration in the light of your common knowledge of the natural tendencies and inclination of human beings.

If the accused be proved guilty beyond a reasonable doubt say so. If not so proved guilty, say so. You must render a verdict with respect to each

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count of the indictment.

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during the deliberations.

The punishment provided by law for the offense-offenses charged in the indictment is a matter exclusively with the province of the Court and should never be considered by the jury in any way, in arriving at an impartial verdict as to the guilt or innocence of the accused.

Upon retiring to the jury room, you will select one of your number to act as your Foreman. The Foreman will preside over your deliberations and will be your spokesman here in Court.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the Deputy Marshal signed by your Foreman or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing and the Court will never communicate with any member of the jury on any subject touching the merits of the case, otherwise than in writing, or orally here in open Court.



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You will note from the oath about to be taken by the Deputy Marshals that they too, as well as all other persons are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind, also that you are never to reveal to any person, not even to the Court, how the jury stands, numerically, or otherwise, on the question of the guilt or innocence of the accused until after you have reached a unanimous verdict.

In other words, you are not to send me a note saying we stand so much and so much for conviction or acquittal. Thus numerically I do not want to know one way or the other. I hope this doesn't occur but should you find yourselves hopelessly deadlocked send me a note to such an effect.

If you come to a verdict you send me a note saying we have arrived at a verdict. Tell what the verdict is and you will tell that in opened Court in answer to a question of the Clerk when he poses those questions to you. If you send me a note stating how you stand numerically on any issue we may well retry this case. We don't want to do that if at all possible.

Now defense counsel suggests in their summation

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to you that you could have testimony read back to you. I tried to get the message across to you and this bar practicing before this Court that I at least disapprove of that practice for this reason. This has been a particularly short trial such as this and as you have just considered the instructions that I have given to you as a whole and intelligently apply the instructions to the facts in this case. You should consider the evidence as a whole. If you come back here and start requesting portions of one testimony or another to be read back you will probably put undo emphasis on that portion that you most recently heard.

This case has been going on approximately a day and a half and you all should be able to remember the testimony. If you find yourself at an impasse over a particular portion of the testimony of course, you may have it read back. Try to consider the testimony in whole and not in individuals pieces. Those are the instructions of the Court and I am going to take about five minutes to discuss the same with the attorneys during that five minutes. Remember, I'll recall you. We will discharge the alternates whose service are no longer needed. The Deputy Marshals will be sworn and then you will be committed to their custody for the



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2 period of time of your deliberations. During this  
3 five minutes please don't discuss any portion of this  
4 case or anything that is going on. Don't discuss the  
5 case. Wait a few more minutes.

6 (Whereupon, the jury left the courtroom.)

7 THE COURT: Mr. Schulman?

8 MR. SCHULMAN: I find the charge satisfactory,  
9 your Honor.

10 MISS SELTZER: Your Honor, with regard to your  
11 accomplice charge, I noted that you had put ~~in~~ I  
12 believe it was request number 12 and there was no  
13 comment made on the fact that the witness had a  
14 felony conviction. I think I included that in the  
15 request.

16 THE COURT: She didn't say it was a felony  
17 conviction and there is no evidence to show it was.  
18 The question whether you are entitled to a major  
19 conviction normally in the State Court it is not a  
20 conviction.

21 There is no evidence that it was a felony.  
22 There is no evidence produced here at the trial.  
23 Under the circumstances I question whether you're  
24 entitled to a charge of credibility on a witness  
25 who has been a convicted felon. You didn't ask for

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2 it specifically.

3 MISS SELTZER: I asked for request number 10.

4 THE COURT: There is no testimony that I heard,  
5 I maybe wrong that she was convicted of a felony as  
6 such.

7 MISS SELTZER: I believe the testimony showed  
8 that she was convicted of selling marijuana. That is  
9 my understanding.

10 MR. SCHULMAN: There is no record of any kind  
11 of convictions itself in the trial transcript.

12 THE COURT: Does the Government have any record  
13 which would show that?

14 MR. SCHULMAN: I have the F.B.I. rap sheet.

15 MISS SELTZER: It's my understanding that  
16 selling marijuana is a felony throughout the United  
17 States.

18 THE COURT: It is not so at all. In this  
19 Court alone it depends on how it is treated under  
20 1841(a). While you're looking around there, do you  
21 want to give me a copy of your requests to charge?  
22 It seems that they didn't find their way into the  
23 file.

24 MISS SELTZER: Your Honor, I have talked with  
25 the defendant and I have talked with the Florida



authorities and she received two, three years probation. I can't recall which for a plea of guilty to the sale. There are three charges, possession, sale and conspiracy.

THE COURT: I don't know whether a sale in Florida is a felony. Do you know?

MISS SELTZER: I'll just make the summation.

THE COURT: That doesn't do me any good.

MISS SELTZER: But your Honor, we do have that as part of your record.

THE COURT: You should have had a certified copy of the conviction showing whether it was a felony or misdemeanor. That's what the proper preparation is all about. I think that I will leave it stand.

MISS SELTZER: Your Honor, I would just like to object to the comments you made when you were describing the various trips to Medellin, Columbia. About trips to Medellin, Columbia I just feel, I don't recall if Mr. Schulman used those words.

MR. SCHULMAN: I used the words.

MISS SELTZER: It shows characterization by the Court and it shows an opinion by the Court --

THE COURT: It is up to the jury to determine

whether they were believable or not.

MISS SELTZER: Your Honor, about separating the pages from the record, Defendant's Exhibit A this is involved the questions involved --

THE COURT: Did you settle that Mr. Schulman?

MR. SCHULMAN: I readapted everything except for those statements which were one, inconsistent and two, clearly or even probably statements copied down from the witness. I have taken each of the pages --

MISS SELTZER: We have disagreements.

THE COURT: I admitted the entire page. You have made it abundantly clear what your feeling is. I said that those portions which were reflections of what he purportedly said to the doctor and only those inconsistencies which she said on the stand will be admitted. I don't know how to make it any clearer than that.

All right, bring the jury back.

Now, the alternate jurors the time has come where you are about to be released. There is not much we can do about it. We need alternate jurors because sometimes one of the jurors gets sick or for some other reason they can't serve and the alternate has to serve in their place. It didn't



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happen in this case. You go with the thanks of the

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Court for your attention to this case. You have

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performed a very valuable service.

CERTIFICATE OF SERVICE

April 6, 1911

I certify that a copy of this brief and appendix  
has been mailed to the United States Attorney for the  
Eastern District of New York.

Frederic G. Sussberg